

### **Remarks**

In the Office Action, it was noted that a certified translation of Chinese Patent Application CN01105283.X has not been provided. Claims 9-10 were rejected under § 112, second paragraph. Further, claims 1-2 and 9-11 were rejected under 35 U.S.C. § 102(b).

Claims 9 and 10 have been amended herein. Claims 1-2 and 9-11 are currently pending in the instant application.

#### **I. Priority**

It was noted in the Office Action that a certified translation of Chinese Patent Application CN01105283.X has not been provided. To address this, a certified translation of the application is attached hereto.

#### **II. § 112, ¶ 2 Rejections**

Claims 9-10 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, claim 9 is rejected because the phrase “safe and efficient amount” is indefinite because Applicants have not defined in the claims or the specification the amount of the polypeptide and pharmaceutically accepted carrier that is considered to be safe and efficient. Further, claim 10 was rejected because the phrase “antimicrobially efficient amount” is indefinite because Applicants have not defined in the claims or the specification the amount of the mentioned polypeptide that is considered to be efficient. It is respectfully submitted that claims 9 and 10 are not indefinite.

##### **A. Claim 9 Is Not Indefinite**

Claim 9, as amended, is directed to a “pharmaceutical composition comprising a pharmaceutically acceptable carrier and from about 1 ug to about 5 mg/kg body weight per day of the polypeptide of Claim 1.” Thus, the amount of the polypeptide set forth in claim 9 is clear, and it is respectfully submitted that claim 9 particularly points out and distinctly claims the subject matter which Applicants regard as the invention. Reconsideration and withdrawal of the rejection of claim 9 is respectfully requested.

##### **B. Claim 10 Is Not Indefinite**

Claim 10, as amended, is directed to the “use of the polypeptide of Claim 1 as a microbicide.” Thus, the phrase “antimicrobially efficient amount” has been removed from the claim, thereby obviating the basis of this rejection. It is respectfully submitted that claim 10

particularly points out and distinctly claims the subject matter which Applicants regard as the invention. Reconsideration and withdrawal of the rejection of claim 10 is respectfully requested.

### **III. § 102(b) Rejections**

Claims 1-2 and 9-11 were rejected under 35 U.S.C. § 102(b) as being anticipated by NCBI Sequence Submissions, Accession Numbers AAL55637 and AF217089, both submitted by Li et al. ("Li").

It is respectfully submitted that claims 1-2 and 9-11 are not anticipated by the Li references, because the instant application claims priority to an application with a filing date that predates both Li references. Section 102(b) of 35 U.S.C. states that a "person shall be entitled to a patent unless the invention was patented or described in a printed publication in this or a foreign country . . . more than one year prior to the date of the application for patent in the United States." While the Li references were "published" on **January 1, 2002** (please note in the Li references the "ROD 01-Jan-2002," which means that the date of release was January 1, 2002), the instant application claims priority to an application that was filed on **January 22, 2001**, thereby predating the Li references. That is, the instant application, filed on July 21, 2003, claims priority to PCT/CN/00032, filed on January 21, 2001, which in turn claims priority to Chinese Patent Application CN01105283.X, which was filed on January 22, 2001, a certified copy of which is provided herewith. Thus, it is respectfully submitted that claims 1-2 and 9-11 are not anticipated because the earliest priority date of the instant application predates the Li references.

Even assuming that the earliest priority date of the instant application did not predate the Li references, it is respectfully submitted that claims 1-2 and 9-11 are not anticipated by the Li references, because the instant application claims priority to an application filed prior to, but within a year of, the publication dates of the Li references. As noted above, an anticipatory printed publication under § 102(b) must have been published "*more than one year* prior to the date of the application." While the instant application claims priority to an application (PCT/CN/00032) that was filed on **January 21, 2002** as explained above, the Li references were "published" on **January 1, 2002**, *less than a year* prior to the priority date of the PCT application. Thus, it is respectfully submitted that claims 1-2 and 9-11 are not anticipated by the Li references, because the priority date of the PCT application to which the instant application

claims priority falls within one year of the publication of the Li references. Therefore, reconsideration and withdrawal of the rejections is respectfully requested.

**Conclusion**

Applicants respectfully submit that claims 1-2 and 9-11 are in condition for allowance. Reconsideration and a Notice of Allowance for all pending claims is respectfully requested.

This response is being submitted with a one-month extension fee, making this a timely response. It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment to Deposit Account No. 04-1420.

Respectfully submitted,

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Date: October 28, 2004

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